

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

**LUCIA FANCHER, individually and
as personal representative of the
ESTATE OF NICK DOMINGUEZ,**

Plaintiff,

v.

No. CIV-11-0118 LH/LAM

**JOHNNY BARRIENTOS, in his individual capacity,
SHERIFF TODD GARRISON, in his individual and
official capacity, and the COUNTY OF DOÑA ANA,**

Defendants.

**ORDER GRANTING IN PART PLAINTIFF'S MOTION TO EXTEND REBUTTAL
EXPERT DISCLOSURE DEADLINE AND SETTING DEADLINE FOR DEPOSITION**

THIS MATTER is before the Court on Plaintiff's *Second Motion to Extend Rebuttal Disclosure Deadline* (Doc. 124), filed March 10, 2014. On March 21, 2014, Defendants filed a response to the motion [Doc. 128] and, on April 7, 2014, Plaintiff filed a reply [Doc. 130]. Having considered the motion, response, reply, and record of the case, and having consulted with the presiding judge on this case, the Court **FINDS** that the motion should be **GRANTED in part** and **DENIED in part**.

On October 24, 2013, the Court entered an order setting a deadline for Plaintiff to disclose a rebuttal expert thirty (30) days after Plaintiff's motion to exclude Defendants' expert witness testimony is ruled on. [Doc. 106]. On January 9, 2014, the Court entered an order denying Plaintiff's motion to exclude Defendant's expert witness testimony, thereby making Plaintiff's deadline to disclose a rebuttal expert February 10, 2014. On February 6, 2014, Plaintiff filed an unopposed motion to extend the deadline by thirty (30) days, and the motion was granted, thereby

extending Plaintiff's deadline to March 12, 2014. [Docs. 121 and 122]. In the motion currently before the Court, Plaintiff asks for an additional sixty (60) days to disclose a rebuttal expert, stating that Plaintiff's potential rebuttal expert informed counsel for Plaintiff "on March 10, 2014 that his schedule precludes him from performing the work needed to render an opinion in this case." [Doc. 124 at 2]. In response, Defendants state that Plaintiff has failed to provide an adequate reason for any further extension of time to disclose a rebuttal expert, and that any additional extensions will continue to delay resolution of this case. [Doc. 128 at 4-5]. In addition, Defendants note that "it is presumed that Defendants will have 30 days to take the expert[']s deposition" and that "the Court has granted Defendants 30 days from the expert's deposition to refile their motion for summary judgment." *Id.* In her reply, Plaintiff states that she has retained a rebuttal expert and that she provided the rebuttal expert's report to Defendants on April 4, 2014. [Doc. 130 at 3]. Plaintiff further states that her rebuttal expert is now available for deposition. *Id.*

Upon consultation with the presiding judge in this case, and considering that Plaintiff has obtained a rebuttal expert and has already provided the expert's report to Defendants, the Court finds that Plaintiff's motion for an extension of time should be granted in part, and that to hold otherwise would result in a harsh penalty to Plaintiff that appears to be unwarranted at this time.

IT IS THEREFORE ORDERED that Plaintiff's *Second Motion to Extend Rebuttal Disclosure Deadline* (Doc. 124) is **GRANTED** to April 4, 2014, which is the date Plaintiff disclosed her rebuttal expert to Defendants, and **DENIED** as to any additional extension of time.

IT IS FURTHER ORDERED that Defendants may depose Plaintiff's rebuttal expert **within thirty (30) days from entry of this Order.**

IT IS SO ORDERED.

Lourdes A. Martinez
LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE